

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AIRWAIR INTERNATIONAL LTD.,

Plaintiff,

v.

ITX USA LLC,

Defendant.

Case No. [19-cv-07641-SI](#)

ORDER RE JURY INSTRUCTIONS

The Court reviewed the parties' joint proposed jury instructions, Dkt. No. 160. Based on its review, the Court finds the proposed jury instructions only contain substantive instructions for trademark infringement under the Lanham Act Section 32. **The proposed jury instructions failed to give substantive instructions explaining the elements and burdens of proof for plaintiff's second through sixth claims for relief and defendant's affirmative defenses and counterclaims.**

Plaintiff's claims for relief are: (2) Federal Unfair Competition and False Designation of Origin in Violation of Lanham Act Section 43(a); (3) Federal Trademark Dilution in Violation of Lanham Act Section 43(c); (4) Unfair Competition in Violation of California Business & Professions Code Section 17200; (5) Common Law Unfair Competition; (6) Dilution in Violation of California Business & Professions Code Section 14247. Dkt. 22.

Defendant's affirmative defenses after summary judgment are (1) absence of injury or damage, (2) no direct or indirect infringement, and (3) failure to mitigate damages. Defendant's counterclaims are (1) declaration of invalidity, (2) declaration of non-infringement and non-dilution,

1 and (3) cancellation of marks.

2 **The parties are directed to meet, confer, and submit jury instructions that describe the**
3 **elements and burdens of proof for each of these claims, affirmative defenses and**
4 **counterclaims.** The parties are directed to resolve as many disputes as possible. As to contested
5 instructions, they should be included back to back, plaintiff's and then defendant's, with each party's
6 objection to the other's version included at the end of each instruction. Lead trial counsel for each side
7 shall review and approve the final set to be provided to the Court.

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9 **The parties will file and send a word document of the joint jury instructions to the Court**
10 **by Thursday, August 5, 2021, at 10 a.m.**

11 **IT IS SO ORDERED.**

12 Dated: August 4, 2021

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14 SUSAN ILLSTON
15 United States District Judge
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